

**A RESOLUTION OF THE TOWNSHIP OF NORTH BRUNSWICK
AUTHORIZING AN AGREEMENT WITH PAYARGO, INC. IN CONNECTION WITH
PROCESSING ONLINE BANKING PAYMENTS**

WHEREAS, in April of 2001, pursuant to Resolution 152-4.01, the Township authorized a contract with Edmunds and Associates for the purchase of financial software and related equipment; and

WHEREAS, Edmunds and Associates currently provides finance and tax collection and online payment services to the Township and offers the utility application; and

WHEREAS, state legislation “Local Public Contracts Law” N.J.S.A. 40A:11-5dd et seq. provides that goods or services may be purchased by an authorizing resolution of the governing body without public bidding if such goods or services are for the purchase, support or maintenance of proprietary software; and

WHEREAS, in 2018 it was determined in the best interest of the Township to bring water & sewer billing and collections back in-house to enable the Township to efficiently provide customers monthly billing, online access to their water consumption, and usage alerts to curtail unanticipated high-water bills; and

WHEREAS, in April of 2018, pursuant to Resolution 106-4.18, the Township entered into an agreement with Edmunds and Associates for their utility billing module that includes online inquiry and payment application, and phone payment application; and

WHEREAS, in June 2021 the Township authorized a three-year agreement, pursuant to Resolution 184-6.21, with a third-party service company, Payargo. Inc., that would aggregate the payment information that originates from an online bill payment services and deliver payments to clients in a mutually agreed upon format which facilitated the automation of posting said payments; and

WHEREAS, this service provided an added efficiency to the department by no longer having to manually post individual bank checks at a cost-effective price to the Township; and

WHEREAS, it is the recommendation of the Chief Financial Officer to authorize a new agreement with Payargo, Inc. for said payment transactions related to Edmunds and Associates software application; and

NOW, THEREFORE, BE IT RESOLVED on this 19th day of August 2024, the Township Council of the Township of North Brunswick does hereby authorize the Mayor and/or Business Administrator to execute an electronic lockbox Agreement with Payargo, Inc. in connection with on-line banking payments, based upon the proposal attached, for a three-year term with two optional one-year extensions with an estimated three-year cost not-to-exceed \$17,500.

Resolution : _____

BE IT FURTHER RESOLVED, the Chief Financial Officer or Tax and Utility Collector and other applicable employees are hereby authorized and directed to take such actions as are necessary to effectuate the terms of the agreement and this resolution.

CERTIFICATION

I, Cavel Gallimore, Chief Financial Officer of the Township of North Brunswick, do hereby certify that funds for the processing fees are available within the Tax Collector and Water/Sewer Utility accounts and future charges shall be certified contingent upon the appropriation of funds in future fiscal year Budgets. Contract PRO24057

Cavel Gallimore
Chief Financial Officer

Justine Progebin
Business Administrator

Ronald Gordon, Esq.
Township Attorney
Approved as to Legal Form

RECORDED VOTE:

| COUNCIL MEMBER | YES | NO | ABSTAIN | NOTES |
|----------------|-----|----|---------|-------|
| MEHTA | | | | |
| GUADAGNINO | | | | |
| ANDREWS | | | | |
| DAVIS | | | | |
| SOCIO | | | | |
| HUTCHINSON | | | | |
| MAYOR WOMACK | | | | |

I hereby certify that the above Resolution was duly adopted by the Township Council of North Brunswick at a meeting duly held on August 19, 2024.

Lisa Russo
Township Clerk

PAYARGO ELECTRONIC LOCKBOX AGREEMENT

This Electronic Lockbox Agreement (the "Agreement") is entered into as of _____, 2024 ("Effective Date") between Payargo, Inc., ("Payargo"), a North Carolina corporation, and the Township of North Brunswick (the "Client").

1. Services. Payargo will provide electronic bill payment concentration services to Client as set forth in this Agreement (the "Service"). Payargo will aggregate payments information that originates from online bill payment services ("Payments Information"), including from such bill payment services as provided by financial institutions (each such originator, a "Payment Processor"), and deliver the Payments Information to Client in a mutually agreed upon format to facilitate Client's automation of the posting of Payments Information.

2. Payargo Obligations. All Payments Information transmitted to Client by Payargo shall be processed in the following manner:

2.1 The data files consisting of Payments Information detail (each, a "Data File") will be made available to Client daily by Payargo in a mutually agreed upon format, no later than 11:00 a.m. Eastern Time (the "Delivery Time") each Business Day. A "Business Day" is defined as each day, Monday through Friday, that is not a Federal Reserve holiday. The Data Files will conform to specifications mutually agreed upon by Payargo and Client. Payargo will notify Client upon discovery of any occurrence that may delay transmission of any Data File later than the Delivery Time.

2.2 The Payments Information contained in each Data File will be in balance with the corresponding expected amount of funds to be received by Client. Funds will be delivered via ACH credit, directly from the providers of online bill payment services for which Payargo aggregates the corresponding Payments Information, into a checking account designated by Client.

2.3 Payargo will maintain records of each Data File and the related Payments Information for two (2) years. During such two (2) year period, Payargo will cause the Payments Information to be available online for research by Client using Payargo's secure web portal.

2.4 Payargo personnel will work with Client to support the implementation and electronic delivery of Payments Information to Client. Payargo will use commercially reasonable efforts to respond to Client-initiated research requests involving Payments Information within three (3) Business Days, provided that sufficient information has been provided by Client to allow Payargo to perform such research. Payargo agrees to assist Client with the correction of invalid account numbers as a means of reducing rejected transactions.

2.5 In the event that Payargo receives from any Payment Processor, a reversing entry or any other demand or notice to return any payment related to any Payments Information for any reason, Payargo will notify Client of the debit entry, reversal or return (collectively, a "Reversal") and will provide Client with notice of the Reversal via email.

3. Client Obligations. All Payments Information received by Client shall be processed in accordance with the following specifications:

3.1 Client will ensure Payment Information is posted to the relevant accounts within twenty-four (24) hours after Payargo transmits the corresponding Data File to Client.

3.2 Reversals will be allowed, irrespective of the reason for the return, pursuant to the instructions provided to Client prior to implementation of the Service.

3.3 Client will designate specific personnel to work with Payargo in support of Service. Client will use commercially reasonable efforts to respond to Payargo-initiated research requests involving Payments Information within three (3) Business Days, provided that sufficient information has been provided by Payargo to allow Client to perform such research. Client agrees to assist Payargo with the correction of invalid account numbers as a means of reducing rejected transactions.

3.4 Client agrees to notify and provide Payargo with new and/or revised banking and contact information relative to the Service to ensure Payargo's records remain current and accurate. If Client does not notify and provide updated information to Payargo in a timely manner,

Client shall be responsible for any errors, pass through fees assessed by Payment Processors, delays, or disruptions to the Service.

4. Rejected Payments. No payment transmitted in connection with any Payments Information provided hereunder may be rejected by Client unless the account data for such payment is incorrect or incomplete, or the destination account for such payment is blocked or closed. If Client is otherwise unable to determine the correct posting information for any such payment, then Client shall return the payment through Payargo's payment portal within 36 hours of the receipt of the relevant Payments Information from Payargo, and shall allow the originating Payment Processor to debit the funds from Client's designated account.

5. Exceptions. Client acknowledges that payments related to Payments Information will not be transmitted electronically in the following circumstances:

- (a) Where the account number for any customer of the Client (each, a "Customer") is incomplete, incorrect or otherwise fails the account number edit procedures established by Payargo and Client; or
- (b) For a payment in excess of the single electronic payment limit, as established by any Payment Processor.

6. Compliance with Law. Each of Payargo and Client shall comply with all federal, state and local laws, statutes, regulations, regulatory guidance, orders or directives, applicable to such party ("Applicable Law"), in connection with the performance of its obligations set forth in this Agreement. Notwithstanding the foregoing, Client, and not Payargo, shall be solely responsible for complying with all Applicable Laws with respect to any Customer or any third party using or receiving the Service through Client, and Client's relationship with such Customer or third party, including without limitation (i) all US economic sanctions laws, including such laws administered by the Department of the Treasury and the Department of Commerce, and (ii) all applicable anti-money laundering laws and regulations, including without limitation all screening obligations promulgated by the US Treasury Department's Office of Foreign Assets Control, the Bank Secrecy Act, applicable sections of the PATRIOT Act and implementing regulations related to Know-Your-Customer and Customer Identification Programs. Without limiting the foregoing, Client continuously represents and warrants throughout the term of this Agreement that neither it nor any Customer or third party using or receiving the Service through Client is on any list of persons or entities compiled by the US Treasury Department's Office of Foreign Assets Control.

7. Fees, Billing, and Payment.

7.1 Fees for the Service under this Agreement ("Fees") will be calculated in accordance with Exhibit A attached hereto. Payargo reserves the right to change Fees with sixty (60) days advance written notice to Client. If Client does not agree to any such change in Fees, Client may, no later than thirty (30) days following receipt of such change in Fees notice from Payargo, provide Payargo with at least thirty (30) days prior written notice of termination.

7.2 Payargo will determine the Fees owed by Client each billing period and provide Client with a written invoice of such Fees. Invoiced amounts are due and payable upon Client's receipt of each such invoice. If any invoiced amounts remain unpaid sixty (60) days after Client's receipt of an invoice, Client will pay a monthly late charge based on the unpaid amounts equal to the lesser of 1.5% or the highest amount allowed by law until such invoice amount is paid in full. Payargo reserves the right to, and may at its discretion, suspend its Service and obligations to Client during any period in which Client's account is more than sixty (60) days delinquent.

8. Confidential Information. Each party represents, warrants and mutually agrees that all information concerning the other party that comes into its possession as a result of this Agreement, and all communications and transactions contemplated hereby, shall be maintained as confidential, and shall not be used by the recipient party or disclosed to any third party except as necessary to permit the activities contemplated by this Agreement, or as

otherwise mutually agreed in writing by the parties. Notwithstanding the foregoing, Client acknowledges and agrees that Payargo may advise potential users of the Service of the existence of a relationship between Client and Payargo.

9. Warranties, Indemnification, and Limitations of Liability.

9.1 Client represents and warrants, so long as Client uses the Service, that it is neither bankrupt nor insolvent, that it has not made an assignment for the benefit of creditors or sought the protection of any bankruptcy, insolvency or similar statute governing creditors' rights generally and does not have a present intent to do so, and that no governmental authority having jurisdiction over it has served a notice of intent to suspend or revoke its operations. Client further continually represents and warrants throughout the term of this Agreement that: (a) it is duly qualified, authorized and licensed to do business and to carry out its obligations under this Agreement, and (b) this Agreement does not violate any law, regulation or agreement to which Client is a party. Client will immediately notify Payargo in writing if at any time any of the representations and warranties set forth in this Section 9.1 are no longer true, or Client reasonably believes such representations and warranties will, subject to the passage of time, become untrue.

9.2 Client shall indemnify Payargo, and its officers, directors, employees, attorneys, agents and representatives (each an "Indemnified Person") and hold each of them harmless from and against any and all claims, demands, losses, liabilities, damages, judgments, disputes, charges or expenses (including litigation expenses, costs of investigations and reasonable attorneys' fees and costs) (each a "Claim") resulting directly or indirectly from this Agreement, or the performance of the obligations set forth herein, unless the exclusive cause of any such Claim is Payargo's failure to perform under this Agreement in accordance with the standards set forth herein. Client will, at its own expense, defend any action or proceeding brought against Payargo or any other Indemnified Person in connection with any such Claim.

9.3 Payargo's liability under this Agreement shall be limited to losses due to Payargo's failure to properly operate and maintain the Service in accordance with the terms of this Agreement, and Payargo's failure to comply with Client's instructions regarding the Service. Payargo shall not be liable for any losses due to, or caused by, directly or indirectly, inaccurate or untimely information provided by Client, Payment Processors, or Consumers. If Payargo causes funds to be transferred other than in accordance with the correct instruction from Client, Payargo shall be responsible for redirecting the misdirected funds to the Client's designated account.

9.4 The parties agree that Payargo's aggregate liability hereunder for any and all claims or obligations relating to this Agreement shall be limited to the amount of the Fees paid by Client for the two (2) calendar months immediately preceding the month in which the first claim occurred. The provisions of this paragraph 9.4 shall apply even if the loss or damage, irrespective of cause or origin, results, directly or indirectly, from either performance or nonperformance of obligations imposed by this Agreement.

9.5 PAYARGO MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL PAYARGO BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL, SPECIAL, INDIRECT, LOST PROFITS, OR EXEMPLARY DAMAGES RESULTING FROM THE PERFORMANCE OR NONPERFORMANCE OF ANY OF PAYARGO'S DUTIES HEREUNDER, WHETHER IN CONTRACT, TORT, OR OTHERWISE, OR FOR ANY LOSS OR DAMAGE TO CLIENT, DIRECT OR CONSEQUENTIAL, ARISING OUT OF OR IN ANY WAY RELATED TO ACTS OR OMISSIONS OF THIRD PARTIES.

10. Delays and Excuse from Performance. Neither party shall be liable for any delay or other failure of performance caused by factors beyond the reasonable control of the applicable party, such as, but not limited to: strikes, insurrection, war, fire, lack of energy, acts of God, mechanical or electrical breakdown, governmental acts or regulations, computer malfunction or acts or omissions of third parties. Each party shall be responsible for notifying the other within a reasonable time if it is unable to perform.

11. Term and Termination Provisions. The term of this Agreement is as of the Effective Date and shall continue for a period of two (2) years and

shall renew automatically for additional one (1) year terms unless either party provides at least sixty (60) days written notice of non-renewal prior to the end of the then-current term. Either party may terminate this Agreement, effective sixty (60) days after sending written notice to the other party, for any reason, or for no reason at all. Notwithstanding the foregoing: (a) either party may terminate this Agreement immediately upon written notice to the other party in the event of (i) a material breach of this Agreement by the non-terminating party; or (ii) the non-terminating party's inability to meet its debts as they come due, receivership or voluntary or involuntary bankruptcy, and (b) Payargo may terminate this Agreement immediately upon written notice to Client if Payargo reasonably suspects that Client has not complied with any of its obligations under Section 6. The obligations and liabilities of the parties incurred prior to the termination date, as well as Sections 6, 7, 8, 9.2, 9.3, 9.4, 13, and this Section 11 shall survive the termination of this Agreement for whatever reason.

12. Assignment. Client shall not assign this Agreement or any rights or duties hereunder to any third party without Payargo's written consent.

13. Governing Law: Good Faith Negotiation, Mediation, Arbitration.

13.1 This Agreement is made in Wake County, North Carolina, and the rights and obligations of the parties hereunder shall be construed and governed by the laws of the State of North Carolina both as to interpretation and performance, except that the North Carolina conflict-of-laws provisions shall not be invoked in order to apply the laws of another state or jurisdiction.

13.2 The parties desire to avoid and settle without litigation any future disputes which may arise between them under this Agreement. Accordingly, the parties hereby agree to engage in good faith negotiations to resolve any such dispute. In the event that they are unable to resolve any such dispute by good faith negotiation, then any dispute may at the option of either party be submitted for mediation and the other party shall be required to participate in good-faith, in such mediation, with the costs thereof (other than each party's attorney's fees) to be split equally between the parties.

13.3 In the event that they are unable to resolve any such dispute after good faith negotiations and good faith mediation, then any dispute arising out of or in connection with this Agreement or the breach thereof shall, at the option of any party thereto, be decided by arbitration. Any such arbitration proceeding shall be conducted in Wake County, North Carolina by a single arbitrator in accordance with the then prevailing commercial arbitration rules of the American Arbitration Association, and judgment thereof may be entered in any court having jurisdiction thereof; provided, however, that discovery and sanctions under the North Carolina Rules of Civil Procedure and the North Carolina Rules of Evidence, shall apply in all arbitration proceedings and be administered by the arbitrator.

Nothing contained herein shall preclude the parties from pursuing all equitable remedies available to them, including preliminary injunctive relief against the other in the event warranted by applicable legal principles. In the event such relief is denied, or granted during the time an arbitration proceeding is pending, ensuing proceedings shall be by arbitration as set forth herein.

IN WITNESS WHEREOF, the parties, each acting under due and proper authority, have entered into this Agreement as of the Effective Date.

TOWNSHIP OF NORTH BRUNSWICK

By: _____
Print: _____
Title: _____
Date: _____

PAYARGO, INC.

By: _____
Print: _____
Title: _____
Date: _____

Exhibit A
Fee Schedule

| | |
|--|---------|
| One time implementation fee..... | \$0.00 |
| Monthly maintenance..... | \$0.00 |
| Per transaction..... | \$0.20 |
| Per swap entered..... | \$0.00 |
| Per reversal/return submitted..... | \$0.20 |
| Fee for failed settlement (if applicable)..... | \$25.00 |